REPORT

Of the Minister of Justice upon the Statutes of the Legislative Assembly of the Province of British Columbia passed during the Session of 1917.

By Command.

J. D. MACLEAN,
Provincial Secretary.

Provincial Secretary's Office,
August 12th, 1918.

AT GOVERNMENT HOUSE,
VICTORIA, B.C., 12th June, 1918.

SIR,—I have the honour to transmit to you herewith a report of the Minister of Justice, dated the 21st May, 1918, duly approved by His Excellency the Governor-General on the 30th May last, respecting the Acts passed by the Legislature of British Columbia in the year 1917, 7 & 8 Geo. V., which are left to such operation as they may have, with the exception of chapter 67, entitled "An Act to validate certain Sales of Land for Arrears of Taxes," and chapter 71, entitled "An Act to amend the 'Vancouver Island Settlers' Rights Act, 1904,'" which are reserved for separate reports.

I have also the honour to enclose herewith a report of the Minister of Justice, dated the 21st May last, approved by His Excellency the Governor-General on the 30th May last, recommending the disallowance of chapter 71 of 7 & 8 Geo. V. (1917), assented to on the 19th day of May, 1917, and received by the Secretary of State on the 31st day of May, 1917, entitled "An Act to amend the 'Vancouver Island Settlers' Rights Act, 1904,'" together with the Order of His Excellency the Governor-General declaring the disallowance of the said Act, to which is attached the certificate of His Excellency the Governor-General as to the receipt of the said Act in the Department of the Secretary of State.

I also have the honour to enclose a report from the Minister of Justice, dated 27th May last, duly approved by His Excellency the Governor-General on the 30th May last, respecting an Act to validate certain sales of land for arrears of taxes, passed in the seventh and eighth years of His Majesty's reign, 1917, and received by the Secretary of State of Canada on the 30th day of May, 1917, and a petition from John Heron *et al.*, praying for the disallowance of the said Act, which, for the reason stated in the said report of the Minister of Justice, is left to such operation as it may have.

I have the honour to be,
Sir,
Your obedient servant,

F. S. BARNARD,
Lieutenant-Governor.

The Honourable the Provincial Secretary.

Certified Copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 30th May, 1918.

The Committee of the Privy Council have had under consideration the annexed report from the Minister of Justice, dated 27th May, 1918, upon chapter 67 of the Statutes of British Columbia, intituled "An Act to validate certain Sales of Land for Arrears of Taxes," passed in the 7th and 8th year of His Majesty's reign (1917) and received by the Secretary of State of Canada on the 31st day of May, 1917, and a petition from John Heron *et al.*, praying for the disallowance of the said Statute.

The Minister, for the reasons stated in the said report, recommends that the said Statute be left to such operation as it may have.

The Committee concur in the report and recommendation of the Minister of Justice, and advise that a copy hereof and of the accompanying report, if approved, be transmitted to the Lieutenant-Governor of British Columbia for the information of his Government; also that a copy be transmitted to the petitioners' solicitor.

All of which is respectfully submitted for approval.

RODOLPHE BOUDREAU.
Clerk of the Privy Council.

His Honour the Lieutenant-Governor of British Columbia.

DEPARTMENT OF JUSTICE,
OTTAWA, 27th May 1918.

To His Excellency the Governor-General in Council:

The undersigned has had under consideration chapter 67 of the Statutes of British Columbia, passed in the 7th and 8th year of His Majesty's reign (1917) and received by the Secretary of State for Canada on 31st May last, intituled "An Act to validate certain Sales of Land for Arrears of Taxes." It is recited by this Act that certain lands were sold for arrears of taxes under the "Taxation Act," the conveyances of which were executed or delivered before the expiry of two years from the day of sale; also that the former Assessment District of New Westminster was in 1895 divided into two assessment districts—viz., the District of Vancouver County and the District of Westminster County—and that conveyances of certain lands situate in the former Assessment District of New Westminster which by the division aforesaid were comprised in the Assessment District of Vancouver County, but were sold for arrears of taxes before the date of the division, were executed by the Assessor of the Assessment District of Westminster County, and that in like manner some conveyances belonging by the division to the Vancouver District were executed by the Assessor of the Westminster District; that doubts have arisen as to the validity of these sales and conveyances, and that it is expedient to validate them. Upon this narrative the Act proceeds to make the conveyances effective notwithstanding that they were made before the expiry of the statutory period or by the wrong Assessor. Provisions are introduced, however, for redemption of the lands sold by paying to the Collector, for the benefit of the purchaser, the purchase price and fair value of improvements, with interest at 12 per cent., or, if the lands be no longer held by the purchaser, that they may be redeemed within sixty days from the passing of the Act by paying to the Collector, for the benefit of the holder of the lands, the amount of the purchase price, the taxes paid by the holder, and the fair value of his improvements, with interest at the rate aforesaid, and there is provision for arbitration of the value of the improvements in case of difference, and further provisions for the necessary procedure.

A petition for the disallowance of this Act, dated 30th April last, was presented to Your Excellency in Council by John Heron, Hugh Heron, and Charlotte Coleman, and copy of this petition, referred for the consideration of the undersigned, was received at the Department of Justice on 10th instant. Copy of the petition is submitted herewith, and it states in effect that the petitioners were interesed in Lots 299, 300, and 301 of Group 1, New Westminster, now Vancouver District, as residuary legatees of Robert Heron, who owned the said lots, and who died about 13th June, 1904. The petitioners proceed to allege that "on the 22nd July, 1896, one E. L. Kirkland, an alleged Assessor of the District of New Westminster, unlawfully and wrongfully, and without the knowledge or consent of the said Robert Heron or of your petitioners, purported to sell the said lands for taxes, and on the 22nd July, 1898, purported to execute a deed of the same to the alleged purchaser, and on the 9th December, 1903, one W. L. Fagan, an alleged Assessor of the District of Vancouver, unlawfully and wrongfully, and without the knowledge or consent of the said Robert Heron or of your petitioners, purported to sell the lands for taxes, and on the 23rd February, 1906, purported to execute a deed of the same to an alleged assignee of the alleged purchaser.

"The first-mentioned tax deed bears date one day before the expiry of two years from the date of the tax sale—the Statute allows the deed to be made only after that period has elapsed—and the person who executed it was not the Assessor for the County of Vancouver, in which the land was situated, but the Assessor for the County of Westminster, who had no authority or jurisdiction whatever in the matter.

"As to the secondly mentioned tax sale, one of the executors of the will of the said Robert Heron, on the 12th October, 1904, made lawful tender to the said W. L. Fagan; but the said Fagan refused to permit the lands to be redeemed, unless under the title supposed to have been acquired by virtue of the first sale.

"At the request of your petitioners the said executors did, by deed under seal dated 31st July, 1913, grant and convey the said lots to your petitioners."

It appears, moreover, that the petitioners brought an action in the Supreme Court of British Columbia on 30th September, 1913, claiming a declaration of title, and that the conveyances were void; that they failed in this action at the trial and upon appeal to the Court of Appeal for British Columbia, but that on appeal to the supreme Court of Canada it was decided, reversing the judgments below, that the sales and conveyances in question were null and void, and that the deeds should be struck off the registry. The property in question is said to be worth $15,000, and the petitioners claim "that the said Act (*a*) is unjust and contrary to sound principles of legislation; (*b*) confiscates private vested rights without providing for compensation, and is, therefore, an irreparable injustice; and (*c*) unduly interferes with private rights and property which has been held by the highest Court of last resort in the Dominion to belong to your petitioners."

When the petition came to be considered in due course in the Department, the Deputy Minister of Justice on 20th instant telegraphed the Attorney-General of British Columbia, as the time limited was not adequate for correspondence through the usual channels, as follows:—

"John Heron, Hugh Heron, and Charlotte Coleman present petition for disallowance of 'Tax-sale Validation Act,' chapter sixty-seven of nineteen seventeen, upon ground that petitioners' title to Lots Two hundred and ninety-nine, Three hundred, and Three hundred and one, Group One, New Westminster District, established in litigation by judgment of Supreme Court of Canada of twenty-fourth June, nineteen sixteen, declaring tax sale and deed to British Columbia Land and Investment Agency null and void. Petitioners allege these lots worth fifteen thousand dollars and that Act in question operates to reverse judgment of Supreme Court and confiscate petitioners' property. Please telegraph for information of Minister of Justice any observations which your Government desires Minister to consider in reporting upon petitioners' application. Time for disallowance expiring."

On 24th instant the Deputy Minister, having received no reply, again telegraphed the Attorney-General, as follows:—

"Reply to my telegram twentieth instant *re* 'Tax-sale Validation Act,' urgently required, and in this connection please state whether your Government would undertake to promote amendment at next session providing that rights adjudicated or in pending cases shall not be prejudiced or affected by the provisions of this Act; and afterwards on the same day the Deputy Minister received a reply from the Attorney-General to his first message, dated 23rd instant, reading as follows:—

"Replying your telegram twentieth, we consider 'Tax-sale Validation Act,' chapter sixty-seven of nineteen seventeen, fully justified under existing circumstances. Legislature considered matter fully and came to conclusion that the Heron suit, as well as several other suits then pending, possessed no real merit, as these suits placed in jeopardy titles of *bona-fide* purchasers, who had been in possession for years after having purchased at tax sale. There seemed to be no good reason for placing cases in litigation on a higher place than others. The circumstances were peculiar. Purchasers at a tax sale held years ago in the former Assessment District of New Westminster had tax deeds given to them one day too soon; in addition, they were executed by the wrong Assessor owing to a division of the district in 1895 to New Westminster County and Vancouver County. In the case of Heron *vs.* Lalonde, the heirs of the original owners, who allowed taxes to accumulate, with the result that their lands were sold for taxes to *bona-fide* purchasers, asked for a declaration that the tax-sale deed was a nullity and that they should be declared the true owners on the technical grounds referred to, notwithstanding that in the meantime the purchasers were in occupation for years, the land greatly improved

in value, or possibly changed hands several times. The only ground for urging that this legislation should not affect the case of Heron *vs.* Lalonde would be that the Legislature should have a higher regard for the law costs which the plaintiffs incurred in the litigation than for the undoubted rights of the purchasers. They, doubtless, incurred some costs, but they were incurred in an effort to deprive *bona-fide* purchasers of their just rights, and their diligence in that respect should not be regarded. Further, as a matter of fact, the case of Heron *vs.* Lalonde was not concluded, as it might still go to the Privy Council, and I understand that was the intention of the defendants. We did, however, provide by this Act that the original owners might redeem by paying for the use of the purchasers the purchasers' price, taxes, and the value of improvements, the same to be fixed by arbitration, giving them sixty days to do so, a period quite long enough to give parties who had no moral or equitable claim to the property. The situation was intolerable, and, as stated, hundreds of other cases were in a similar position; we did not discriminate between titles in litigation and titles in which litigation was not pending. Why should those who started unmeritorious litigation be placed in a better position than others, or be allowed to get away with the fruits of litigation based on the technicalities referred to? If the Act were not passed, not only would many titles be imperilled, but it would have affected loan securities, and investments as well. Further, these titles given to *bona-fide* purchasers were Government titles and not municipal titles. They are signed by the Government Assessor as an official deed of the Crown in the right of the Province. It was incumbent on the Crown to protect its titles doubly, so when the mischief was caused by the Government's division of the assessment district and the Act of its own Assessor in signing the deed a day too soon. It is submitted that there is ample precedent for allowing Provincial legislation overriding judgment of the Court to stand, and that following the practice laid down in the past by your Department, legislation within the competence of Provincial Legislature should not be disallowed on ground of alleged hardship."

Although the undersigned does not find himself in agreement with all these observations of the Attorney-General, it is true that the situation which the Attorney-General describes was a proper one for legislative action. Titles have been transferred for arrears of taxes in intended execution of statutory powers, and presumably the proceeds of these sales have been appropriated or distributed conformably to statutory requirements. There seems to have been considerable difference of judical opinion, but in the result the conveyances have been declared invalid for defective procedure. It is not suggested that the taxes were not justly due; that the lands were not chargeable, or that they would have been redeemed previously to sale if the sales had taken place at the time, or if the conveyances had been executed by the officer authorized by Statute. The judgment of the Supreme Court directed that there should be no costs to either party in that Court or in the Courts below, and the Statute contains a provision, such as it is, enabling the former proprietors to redeem their lands upon compliance with the conditions prescribed by the Statute. In these circumstances, the undersigned is of opinion that Your Excellency in Council would not be justified to interfere with the operation of the Validating Act, merely because of the absence of provisions which would have commended themselves to Your Excellency in Council for the better protection of litigants in pending cases, or of those who had already succeeded to have their claims judicially established.

The undersigned recommends, therefore, that the Statute be left to such operation as it may have, and that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of British Columbia for the information of his Government; also that a copy be transmitted to the petitioners' solicitor.

Humbly submitted.

(Signed.) CHARLES J. DOHERTY.
Minister of Justice.

Certified Copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 30th May, 1918.

The Committee of the Privy Council have had under consideration the annexed report of the Minister of Justice, dated 21st May, 1918, upon the Statutes of the Legislature of British Columbia passed in the year 1917, 7 & 8 Geo. V.

The Committee concur in the views of the Minister of Justice as set out in the said report, and, on his recommendation, advise that a copy hereof and of the accompanying report, if approved, be transmitted to the Lieutenant-Governor of British Columbia for the information of his Government.

All of which is respectfully submitted for approval.

RODOLPHE BOUDREAU.
Clerk of the Privy Council.

His Honour the Lieutenant-Governor of British Columbia.

DEPARTMENT OF JUSTICE,
OTTAWA, May 21st, 1918.

To His Excellency the Governor-General in Council:

The undersigned has had under consideration the Statutes of the Legislature of British Columbia passed in the year 1917, 7 & 8 Geo. V., and he is of opinion that these Statutes may be left to such operation as they may have, with the exception of chapter 67, entitled "An Act to validate certain Sales of Land for Arrears of Taxes," and chapter 71, entitled "An Act to amend the 'Vancouver Island Settlers' Rights Act, 1904,'" which are reserved for separate reports.

As to chapter 76, entitled "An Act to amend the 'Vancouver Incorporation Act, 1900,'" the undersigned has had under consideration a complaint submitted to the Prime Minister by Messrs. Geo. D. Atkin & Co., of London, enclosing copy of a circular letter of 14th July last, addressed by the Secretary of British Columbia Electric Railway Company, Ltd., on behalf of the directors, to the shareholders of the company, explaining to the shareholders that by virtue of the legislation in question the City of Vancouver will be permitted to compete in the supply of electric light and power after 1st June, 1919. It would appear that the city had applied to the Legislature in 1900 for reconsideration of its Act of Incorporation with a view to obtain, among other objects, the repeal of a provision prohibiting competition with the company except upon condition of willingness to treat for the acquisition of the company's franchise. This application was opposed on behalf of the company, and in the result a compromise was reached, satisfactory at the time to both parties, whereby legislation was enacted which contains certain limitations against competition. These limitations have now been withdrawn by the legislation in question, and it is upon that account that Messrs. Atkin & Co. protest against the legislation as affecting investors.

Upon consideration of the correspondence submitted, the undersigned concludes that the rights of the company, depending merely upon antecedent legislation, were such as the Legislature might change in the execution of its constitutional powers, and that Your Excellency in Council is not required to justify or to become responsible for the policy of the legislation in declining to exercise the power of disallowance upon the grounds suggested.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of British Columbia for the information of his Government.

Humbly submitted.

(Signed.) CHARLES J. DOHERTY.
Minister of Justice.

Certified Copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor-General on the 30th May, 1918.

The Committee of the Privy Council have had under consideration the annexed report from the Minister of Justice, dated 21st May, 1918, recommending, for the reasons therein stated, that the Statute of the Legislature of British Columbia, chapter 71 of 7 & 8 Geo. V. (1917), assented to on the 19th day of May, 1917, and received by the Secretary of State for Canada on the 31st day of May, 1917, intituled "An Act to amend the 'Vancouver Island Settlers' Rights Act, 1904,'" be disallowed.

The Committee concur in the views of the Minister of Justice as set out in the said report, and advise that the said Act be disallowed accordingly.

The Committee, on the recommendation of the Minister of Justice, further advise that a copy hereof and of the accompanying report, if approved, be transmitted to the Lieutenant-Governor of British Columbia for the information of his Government; also that copies be transmitted to the petitioners, the Esquimalt & Nanaimo Railway Company, Canadian Collieries, Limited, and the National Trust Company, Limited.

All of which is respectfully submitted for approval.

RODOLPHE BOUDREAU.
Clerk of the Privy Council.

His Honour the Lieutenant-Governor of British Columbia.

OTTAWA, 21st May, 1918.

To His Excellency the Governor-General in Council:

The undersigned has had under consideration a Statute of the Legislature of British Columbia, chapter 71 of 7 & 8 Geo. V. (1917), assented to on 19th May, 1917, and received by the Secretary of State for Canada on 31st May, intituled "An Act to amend the 'Vancouver Island Settlers' Rights Act, 1904.'" This is a very short Act, consisting of two sections, which are here reproduced as follows:—

"1. This Act may be cited as the 'Vancouver Island Settlers' Rights Act, 1904, Amendment Act, 1917.'

"2. Section 3 of the 'Vancouver Island Settlers' Rights Act, 1904,' being chapter 54 of the Statutes of 1904, is hereby amended by striking out the words 'within twelve months from the coming into force of this Act' in the second and third lines of said section, and inserting in lieu thereof the words 'on or before the first day of September, 1917.'"

It will be observed that this amendment, upon the face of it, merely extends to the 1st day of September, 1917, a time which had been limited by the "Vancouver Island Settlers' Rights Act, 1904," and by reference to the latter Act it will be perceived that the time so limited had expired on 10th February, 1905. But involved in this very simple legislative expedient is an invasion of valuable proprietary rights which has occasioned an application for disallowance based upon irresistible grounds.

The Act of 1904 recites an intention to make provision for persons who had settled upon lands within the belt reserved for railway purposes on Vancouver Island by Order in Council of 30th June, 1873, for the purpose of implementing section 11 of the Terms of Union upon which British Columbia entered the Confederation, and that the said settlers are entitled to peaceable and absolute possession of the land occupied by them and title thereto in fee-simple in accordance with the Statutes of British Columbia at the time existing governing the disposal of public lands; and it proceeds to enact that upon application on behalf of any settler to the Lieutenant-Governor in Council within twelve months from the coming into force of the Act, which was assented to on 10th February, 1904, showing that the settler had occupied or improved land within the Railway Belt prior to the enactment of the "Settlement Act" of 1883, cap. 14 of 47 Vict., with the *bona-fide* intention of living on the said land, accompanied by reasonable proof, a grant of the fee-simple in such land should be issued to him or his legal representative, free of charge, and in accordance with the provisions of the "Land Act" in force at the time when said land was first occupied or improved by the settler; and, moreover, that the rights granted to the settlers under the said Act should be asserted by and defended at the expense of the Crown.

Application for the disallowance of the Act of 1904 was made to His Excellency the Governor-General in Council upon petition of the Esquimalt & Nanaimo Railway Company, setting forth, as the fact was, that the lands within the Railway Belt were granted to the Dominion Government for the purposes of constructing and to aid in the construction of a railway between Esquimalt and Nanaimo; that the Dominion had contracted by statutory authority for the construction of the railway upon terms that these lands, in so far as they might be vested in Her late Majesty, or held by Her Majesty for the purposes of constructing or to aid in the construction of the railway, should be conveyed to the contractors upon completion of the work to the satisfaction of the Governor in Council; that it was, moreover, agreed by the contract that the land was to be granted to the company subject to the stipulation, proviso, or exception, *inter alia*, that every *bona-fide* squatter who had previously occupied or improved any

of the said lands for a period of one year prior to the 1st day of January, 1883, should be entitled to a grant of the freehold of *the surface rights* of the said squatted land to the extent of 160 acres at the rate of $1 per acre; that the Esquimalt & Nanaimo Railway Company completed the work to the satisfaction of the Governor in Council and received from the Dominion a grant of the lands, subject to the statutory terms and provisions. Upon these and other allegations, which will appear upon reference to the papers herewith, the Esquimalt & Nanaimo Railway Company submitted that the Act should be disallowed as affecting an unjust confiscation of the company's rights in the property. No question was suggested as to the rights which by the legislation of 1883 the squatters were recognized to possess, and by which the title of the company was affected, but it appeared that the squatters were not satisfied with the provision made for them, and that they had agitated claims which had been the subject of investigation, with the result that they were found entitled to further consideration by the Provincial authorities. These facts were set up by the Government of British Columbia in reply to the petition presented by the company, and the Government endeavoured to justify the legislation by the submission of an argument intended to show that certain settlers who had, previously to the "Settlement Act" of 1883, recorded tracts of unoccupied, unsurveyed, and unreserved Crown lands had acquired a right by the legislation then in force to obtain title to the lands so recorded; that this right continued irrespective of the provisions of the "Settlement Act," or was not affected by those provisions, and that the Legislature did not thereby convey to the Dominion any lands within the Railway Belt to which the settlers had lawful claim; it was suggested that the alleged right of these settlers, although, in the absence of further legislation, incapable of vindication at their own suit, could be asserted by action brought either by the Attorney-General on behalf of the Province, or by the settlers themselves with the aid of a Provincial legislative grant, and it was the latter course, as stated by the Provincial reply, which commended itself to the Advisers of the Lieutenant-Governor.

It may be observed here, without inquiring further into the merit of this argument, that, whatever weight the argument may possess as to settlers of the description to which it applies, the settlers who are benefited by the Act of 1904 are defined to mean those persons "who prior to the passing of the said Act (chapter 14 of 47 Vict.) occupied or improved lands situated within the said Railway Belt with the *bona-fide* intention of living thereon," and that settlers of this description are not distinguishable from those who are otherwise named squatters.

By the report of the Minister of Justice upon the application for the disallowance of the legislation of 1904, approved by His Excellency in Council on 21st June of that year, the Minister stated that it was unnecessary to enter minutely into the history of the Railway Belt; that it was sufficient to state that it was set apart in pursuance of the Terms of Union with British Columbia to be appropriated in furtherance of the construction of the proposed railway to connect British Columbia with the Eastern Provinces; that by the "Settlement Act" of 1883 the Railway Belt was granted to the Dominion Government for the purpose of constructing and to aid in the construction of the Esquimalt & Nanaimo Railway; that the Dominion in turn had granted the property to the company, and that under these circumstances, if the Act would have the effect apprehended by the Railway Company of divesting the company of its title granted by the Government of Canada in respect of any of the lands in the Belt, the Minister would feel it to be his duty to recommend disallowance in order to prevent the consummation of such an injustice. The Minister considered, however, that the Act could not have this effect for reasons which he stated; but unfortunately it transpired ultimately by the judgment of the Judicial Committee of the Privy Council in the case of McGregor *vs.* Esquimalt & Nanaimo Railway Company, 1907 Appeal Cases, 462, that the Provincial grants authorized by the Statute did operate to convey the fee-simple, notwithstanding the previous transfers or conveyances as between the Governments and as between the Dominion and the respondent company. In the meantime the Esquimalt & Nanaimo Railway Company, which had been constructed and was being worked under Provincial powers, was by Dominion Statute of 1905 declared to be a work for the general advantage of Canada, and the Provincial powers of legislation with regard to the company were thereby transferred, but this circumstance was, upon ordinary principles, held not to affect the consideration of rights in the pending case. Subsequently, in view of the result of the litigation, the company succeeded in obtaining from the Government of British Columbia an agreement of indemnity or for compensation in respect of the lands of which the company

had been thus deprived, and this arrangement is evidenced by Provincial Statute, chapter 17 of 1910, which does not, however, extend to provide any compensation for the loss to which the company is subjected by the operation of the present Statute.

The Esquimalt & Nanaimo Railway Company, the Canadian Collieries (Dunsmuir), Limited, and the National Trust Company, Limited, have now submitted a joint petition for disallowance of the Statute, chapter 71 of 1917, copy of the petition submitted herewith, and these companies represent that the legislation constitutes an undue interference with the policy of the Dominion in respect of the disposition whereby in the general public interest the Railway Belt was made available to the Esquimalt & Nanaimo Railway Company in consideration of the building of the railway, abrogating *pro tanto* the agreement between the Dominion and the Province of 1883, and derogating from the grant made by the Dominion to the Railway Company in pursuance of the general arrangement, and, moreover, divesting the Railway Company and the Canadian Collieries, claiming under the company, as well as the bondholders represented by the Trust Company, of a very valuable portion of their assets or security; the lands in question being coal-bearing lands of great value, either as ascertained or in prospect.

Upon reference of the petition for the consideration of the local Government the Attorney-General of the Province submitted in reply a memorandum, copy herewith, in which he urges that the amending Act involves no principle not sanctioned by the Act of 1904, and that, since the latter Act was permitted to remain in operation, Your Excellency's Government, for the sake of consistency, should reject the petitioners' claim. The Attorney-General, however, relies principally upon the fact, which the petitioners indeed may admit without affecting their case, that the settlers had claims which were entitled to be considered, and that this fact was recognized not only locally, but by the Government of the Dominion, which issued a Commission in 1897 to inquire into the matter. The Commissioners' report is quoted, finding that, although the settlers, speaking generally, had no legal claim to the coal and other minerals under their lands, they had a just claim for redress at the hands of the Province, which it was the duty of the Province to accommodate. Upon these findings the Attorney-General contends, remarkably enough, that the legislation is in keeping with the policy of the Dominion, because the Dominion caused the claims of the settlers to be investigated, and in execution of the duty and obligations of the Province, because it was found that the Province should compensate the settlers. He urges, moreover, that the Act is *intra vires* of the Province, which is not denied, and that disallowance would involve a serious interference with Provincial rights.

The petitioners having expressed a desire that counsel should be heard on their behalf, an appointment was made, in exception to the ordinary procedure for consideration of applications for disallowance, and the Attorney-General was notified as well as the petitioners. The argument was heard before the Prime Minister, the undersigned, and the Minister of Public Works, counsel representing the three petitioning companies, and also, in opposition, the Granby Consolidated Mining, Smelting, and Power Company, Limited, which is understood to claim under grants issued by the Province pursuant to the authority of the Act under consideration. The Attorney-General of British Columbia was not represented, but presumably the Granby Company was notified by the Attorney-General, and represented views with which he was in accord. At the hearing the matter was very fully discussed, and the principal argument presented in support of the legislation on behalf of the Granby Company, which was the only interest appearing to uphold the legislation, was that the settlers' claims had been of long standing, antedating in their origin the legislation under which the title passed from the Province to the Dominion, and from the Dominion to the Esquimalt & Nanaimo Railway Company; that the quieting of these claims was eminently a proper matter for disposition by the local Legislature, and that Your Excellency's Government ought not to review the conclusions reached and Provincially sanctioned for the settlement of these claims.

On the other hand, it was urged, and in fact it was not denied, that the company had received its land grant in pursuance of the agreement of the Government of Canada founded upon legislation sanctioned by the Dominion and the Province, which defined precisely the measure of the settlers' claims; that large pecuniary interests were involved, and that the companies were not in anywise responsible for the settlers' claims, or affected by them, otherwise than in so far as the Act in question, or the exercise of the powers conferred by the Act, might operate to transfer the title or diminish the area of the company's coal-bearing lands.

It will be observed that, although after the effect of the Statute of 1904 had been judicially declared, an agreement was reached between the Railway Company and the Province, as evidenced by the Statute of 1910, to afford the company a measure of compensation for the loss which it had suffered through the operation of the Act; no provision is now made or suggested to compensate for the loss which the petitioners suffer by reason of the further grants issued under the authority of the present legislation, and, indeed, it is urged on their behalf that it is impossible in the present state of development of the property to realize the loss to which they are subjected by reason of the granting of their lands and mineral rights by the Province under the authority of the Statute.

In these circumstances the question which presents itself for Your Excellency's consideration is whether it is compatible, with a proper fulfilment of the duty charged upon Your Excellency in relation to the power of disallowance, that the Act now in question should be permitted to remain in operation.

It will be perceived by review of the reports of the Ministers of Justice from the Union to the present time that there has been great reluctance to interfere with Provincial legislation, and that, notwithstanding a considerable number of cases in which disallowance was sought upon established grounds, perhaps not more than a single Statute has been actually disallowed by reason merely of the injustice of its provisions. Cases are not lacking, however, in which disallowance has been avoided by reason of amendments undertaken by the local authorities, upon the suggestion of the Ministers of Justice, to remedy the complaints against the original Acts; and certainly the constitutional propriety and duty of reviewing Provincial legislation upon its merits when it is the subject of serious complaint has been maintained by every succeeding Minister of Justice from the time of the Union, save only the immediate predecessor of the undersigned, who suggested in effect that the power had become obsolete. In the opinion of the undersigned the power is unquestionable and remains in full vigour. Indeed, the very careful consideration which the Ministers have been accustomed to give to applications presented from time to time for disallowance depending upon reasons of inequality or hardship is inconsistent with any other view. But although the Governor in Council exercises constitutionally a power of review and control, he is certainly not responsible for the policy, wisdom, or expediency of Provincial legislation, and therefore he should not disallow merely because an Act is in his judgment ill-advised, untimely, or defective; or because its project lacks either in principle or detail that degree of equity and consideration of the existing situation which in the opinion of the Governor in Council should have commended itself to the Legislature. Indeed, it must be realized in the exercise of the power of disallowance that legislative judgment upon Provincial matters is committed to the Legislatures and not to Your Excellency in Council, and that the former therefore have a reasonable and just degree of freedom to work out their measures of legislation in the manner which the legislatures deem requisite or advisable or best adapted reasonably to provide for the situation in hand. On the other side, it cannot be denied that there are principles governing the exercise of legislative power, other than the mere respect and deference due to the expression of the will of the local constituent assembly, which must be considered in the exercise of the prerogative of disallowance. It may be difficult, and it is not now necessary to define these principles for purposes of general application; certainly, although legislative interference with vested rights or the obligation of contracts, except for public purposes and upon due indemnity, are processes of legislation which do not appear just or desirable, nevertheless, it would, in the opinion of the undersigned, be formulating too broad a rule to affirm that local legislation affected by these qualities should in all cases be displaced by means of the prerogative.

The present case is, however, of very exceptional character, and it must fall within any just limitation of the rule. There can be no doubt about the intention of the enactment having regard to the sequence and history of the legislation. A large area of valuable land was transferred by the Province to the Dominion destined and appropriated by statutory arrangement and sanction as between the two Governments for the benefit of the Esquimalt & Nanaimo Railway Company, which undertook the burden of constructing and operating the railway. These lands were in turn transferred by the Dominion to the company upon the terms of its contract. The stipulations as to title were precise and definite, and the situation, claims, or rights of settlers and squatters were particularly considered and provided for. The settlers

were accorded the right to obtain grants of 160 acres for a period of four years upon payment of $1 per acre, and squatters who had been on the land for the purpose of improving it for at least one year were entitled to receive the surface rights only of 160 acres each upon payment of the like price. Subject to these conditions the lands passed to the company, and the company is certainly justified to look not only to the Province, but also to the Dominion, with whom it contracted and from whom it received its grant, to see that its title is not impaired by legislative revision of the terms after performance of the contract by which the lands were earned. The identic legislation on the part of the Province and of the Dominion of 1883 evidences a matter of Dominion as well as of local policy which has its foundation in the terms upon which British Columbia entered the Union, by which, in consideration of the construction, equipment, and undertaking to operate and maintain the railway, the company received the statutory subsidies, including the lands in question, subject to the special accommodation of the claims of settlers and squatters, for which provision was expressly made; and the process by which, notwithstanding these solemn assurances, a valuable portion of the property which it was thus intended that the company should receive, and which the company did receive, is taken away by the exercise of the legislative authority of one of the parties to the tripartite agreement cannot adequately be characterized in terms which do not describe an unjustifiable use of that authority, in conflict with statutory contractual arrangements to which the Government of Canada as well as the Province was a party. The Railway Company, the Collieries Company, as assignee of some of these lands, and the bondholders who have loaned their money to assist in the operation of the mines upon security of a statutory title, the most conclusive which the law knows, submit their case for the consideration of Your Excellency in Council; they invoke the powers conferred by the "Constitutional Act"; and the undersigned, in agreement with his predecessor of 1904, considers that both the proper execution of these powers, and the obligation of honour and good faith in the administration of the transaction on the part of Your Excellency in Council, require that the Province should not be permitted substantially to diminish the consideration of the contract.

Upon the submission of the Attorney-General that disallowance would involve a serious interference with Provincial rights, the undersigned observes that Provincial rights are conferred and limited by the "British North America Acts," and while the Provinces have the right to legislate upon the subjects committed to their legislative authority, the power to disallow any such legislation is conferred by the same constitutional instrument upon the Governor-General in Council, and incident to the power is the duty to execute it in proper cases. This power and the corresponding duty are conferred for the benefit of the Provinces as well as for that of the Dominion at large. The system sanctioned by the Act of 1867, as interpreted by the highest judicial authority, "provides for the federated Provinces a carefully balanced constitution, under which no one of the parts can pass laws for itself, except under the control of the whole acting through the Governor-General." The mere execution of the power of disallowance does not therefore conflict with Provincial rights, although doubtless the responsibility for the exercise of the power which rests with Your Excellency in Council ought to be so regulated as not to be made effective except in those cases in which, as in the present case, the propriety of exercising the power is demonstrated.

The undersigned recommends, therefore, that the said Statute, chapter 71 of 1917, intituled "An Act to amend the 'Vancouver Island Settlers' Rights Act, 1904,'" be disallowed, and that a copy of this report, if approved, be transferred to the Lieutenant-Governor of British Columbia for the information of his Government; also that copies be transmitted to the petitioners, the Esquimalt & Nanaimo Railway Company, Canadian Collieries, Limited, and the National Trust Company, Limited.

Humbly submitted.

(Signed.) CHARLES J. DOHERTY.
Minister of Justice.

AT THE GOVERNMENT HOUSE AT OTTAWA.

THURSDAY, the 30th day of May, 1918.

PRESENT:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

Whereas the Lieutenant-Governor of the Province of British Columbia, with the Legislative Assembly of that Province, did on the 19th day of May, 1917, pass an Act, chaptered 71, and intituled "An Act to amend the 'Vancouver Island Settlers' Rights Act, 1904'":

And whereas the said Act has been laid before the Governor-General in Council, together with a report from the Minister of Justice, recommending that the said Act should be disallowed:

Therefore, His Excellency the Governor-General in Council has this day been pleased to declare his disallowance of the said Act, and the same is hereby disallowed accordingly.

Whereof the Lieutenant-Governor of the Province of British Columbia and all other persons whom it may concern are to take notice and govern themselves accordingly.

RODOLPHE BOUDREAU.
Clerk of the Privy Council.

His Honour the Lieutenant-Governor of British Columbia.

I, Victor Christian William, Duke of Devonshire, Governor-General of Canada, do hereby certify that the Act passed by the Legislature of the Province of British Columbia on the 19th day of May, 1917, chaptered 71, and intituled "An Act to amend the 'Vancouver Island Settlers' Rights Act, 1904,'" was received by me on the 31st day of May, 1917.

Given under my hand and seal this thirtieth day of May, nineteen hundred and eighteen.

[SEAL.] DEVONSHIRE.

VICTORIA, B.C.:
Printed by WILLIAM H. CULLIN, Printer to the King's Most Excellent Majesty.
1918.